

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ASSOCIATION OF AMERICAN
UNIVERSITIES, et al.,

Plaintiffs,

v.

DEPARTMENT OF ENERGY, et al.,

Defendants.

Case No. 25-cv-10912-ADB

DEFENDANTS' NOTICE OF FILING SUPPLEMENTAL DECLARATION

Defendants respectfully submit the following supplemental information in response to the Court's inquiries at the hearing on April 28, 2025, regarding the government's processes for establishing negotiated indirect cost rates with institutions of higher education ("IHE"):

1. IHEs negotiate with a cognizant federal agency—usually the U.S. Department of Health and Human Services or the U.S. Department of Defense's Office of Naval Research—concerning an indirect cost rate for use by the IHE across all federal agencies. *See* Declaration of Berta Schreiber ("Decl.") ¶ 4.

2. The final negotiated indirect cost rate is then established in a written agreement commonly referred to as a "Negotiated Indirect Cost Rate Agreement" or "NICRA". *See* Decl. ¶

4. The NICRA is signed by both the cognizant agency and the IHE. *See* Decl. ¶ 4.

4. An IHE may then submit its NICRA when applying for a Notice of Funding Opportunity ("NOFO") issued by the Department of Energy ("DOE"), which typically requires an applicant to submit a proposed budget that includes indirect costs. *See* Decl. ¶¶ 3, 4, 5. The

NICRA supports the indirect cost rate included in the IHE's application, and it is used by the DOE to review the IHE's proposed budget. *See* Decl. ¶ 5.

5. When the DOE selects an IHE for an award, it notifies the IHE and requests that the IHE negotiate with the DOE for a final award. Decl. ¶ 6. The DOE then negotiates final award terms with the IHE and prepares the award documents. Decl. ¶ 6.

6. Once all terms and conditions are commemorated in final award documents, an authorized representative for the IHE and the awarding DOE office execute the final award documents, which typically include a financial assistance agreement, terms and conditions of the award, and other items attached and incorporated by reference. Decl. ¶ 7.

Dated: May 2, 2025

Respectfully submitted:

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United States Attorney

BRIAN C. LEA
Deputy Associate Attorney General

By: /s/ Nicole M. O'Connor
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CERTIFICATE OF SERVICE

I, Nicole M. O'Connor, hereby certify that a true copy of the above document was served upon all parties of record via this court's electronic filing system and upon any non-registered parties via regular mail.

Dated: May 2, 2025

/s/ Nicole M. O'Connor

Nicole M. O'Connor

Assistant U.S. Attorney